

Claims 1-9 and 11-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over WO 98/09812 to Berlin et al. (hereafter "*Berlin et al. '812*") in view of *Bengtsson et al. '550* and *Wilkinson et al.* on the grounds set forth in paragraph 7 of the Official Action.

Claim 10 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Berlin et al. '812*, *Bengtsson et al. '550*, and *Wilkinson et al.* as applied to claim 8 above, and further in view of *Kotani et al.* on the grounds set forth in paragraph 8 of the Official Action.

Each of these rejections should be withdrawn because the *Bengtsson et al. '550* published application does not qualify as prior art against the present application for at least the following reasons:

The present application was filed under 35 U.S.C. §371 and, under 35 U.S.C. §363, has an effective filing date in the U.S. Patent and Trademark Office that is the same as the international filing date, e.g., August 30, 2000.

Applicants note that the *Bengtsson et al. '550* published application published on June 28, 2001, which is after the August 30, 2000 international filing date of this application. The *Bengtsson et al. '550* published application was filed on February 16, 2001 and claims the benefit of an earlier filing date to U.S. Application No. 09/265,414, filed March 10, 1999 and U.S. Application No. 09/065,065, filed October 9, 1998. Thus, the *Bengtsson et al. '550* published application qualifies as prior art only under 35 U.S.C. §102(e).

However, use of this reference in any obviousness-based rejection of Applicants' present claims is improper, because it is commonly assigned to the assignee of the present application. See 35 U.S.C. §103(c) (stating that subject

matter developed by another which qualifies as prior art only under one or more of subsections (e), (f), and (g) of §102, shall not preclude patentability.

Per MPEP §706.02(I)(2), the *Bengtsson et al.* '550 published application can be removed as a reference by an affidavit or statement of common ownership at the time of the invention of the present application. Accordingly, Applicants provide the following statement:

U.S. Patent Application No. 10/070,167 and U.S. Patent Application No. 09/784,053 were, at the time U.S. Patent Application No. 10/070,167 was made, commonly owned by or under an obligation of assignment to Tetra Laval Holdings & Finance S.A.

Since the *Bengtsson et al.* '550 published application is no longer available as prior art in an obviousness rejection against the application, Applicants respectfully request the withdrawal of the above-noted rejections.

CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is earnestly solicited. Should the Examiner feel that any issues remain, it is requested that the undersigned be contacted so that any such issues may be adequately addressed and prosecution of the instant application expedited.

Respectfully submitted,

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By: _____

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